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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: FEB 02 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Syria who was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for having procured admission into the United States by fraud or willful misrepresentation in May 1998 and for accumulating unlawful presence in the United States of more than one year. In 1996, the applicant was refused a visa to enter the United States by a consular officer in Damascus, Syria. In May 1998, the applicant entered the United States on a photo-substituted Ecuadorian passport. On October 5, 1999, an immigration judge granted the applicant voluntary departure from the United States based on sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. The applicant married a U.S. citizen on November 27, 1999 and voluntarily departed as ordered on February 1, 2000. On January 10, 2000, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On April 24, 2001, the Form I-130 was denied. On March 13, 2002, the applicant's spouse filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. On August 13, 2002, the Form I-129F was approved. The applicant seeks the above waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The officer in charge (OIC) concluded that the discretionary factors pertaining to the hardships of the applicant's spouse did not outweigh the seriousness of the applicant's lack of respect for the law. *See* Decision of the Officer in Charge, dated March 20, 2003.

On appeal, the applicant's spouse submits a statement, dated April 11, 2003. The record also contains a copy of the marriage record for the applicant and his spouse; a copy and translation of the marriage certificate for the applicant and his spouse for a second ceremony held in Syria; a statement of the applicant, undated; a statement of the applicant's wife, dated November 15, 2002; a copy of the U.S. birth certificate for the applicant's wife; copies of financial and tax documents for the applicant's spouse; letters of support from family members and friends and photographs of the applicant and his wife. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver. – The Attorney General [now Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(i) of the Act provides:

(1) The Attorney General [Secretary] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act and a section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B)(i)(II) are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The BIA noted in *Cervantes-Gonzalez*, that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him

to Mexico in the event he was ordered removed from the United States. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

In the present application, the applicant married his U.S. citizen wife after he was ordered by an immigration judge to voluntarily depart from the United States. The AAO notes that at the time the applicant married his current spouse, she was aware that he was required to depart the United States, undermining the applicant's claim of extreme hardship to his spouse caused by his inadmissibility to the United States.

The applicant's spouse contends that she is unable to support herself if she continues traveling to Syria for prolonged periods of time thereby preventing her from maintaining employment in the United States. *See* Statement o[redacted]dated April 11, 2003. The applicant supports these assertions, stating, "after my leaving, our life became so hard and miserable especially for my wife who sacrificed everything for me ... she lost her job, her house, her car and all her personal belongings only to come to Syria in order to live with me." *See* Statement of [redacted]ndated. The applicant's wife states that she cannot work in Syria. However, the applicant's wife does not establish financial hardship to herself if she remains in the United States and resumes full-time employment in her chosen field.

The applicant's spouse states that she is suffering emotionally and that her husband's immigration situation has caused her "great mental hardship." *See* Statement of [redacted]dated November 15, 2002. The record contains no documentation of the mental state of the applicant's spouse beyond her own general assertions. While any emotional hardship suffered by the applicant's wife is regrettable, the record fails to establish the nature or extent of her suffering and therefore, the AAO cannot deem the applicant's wife to be suffering extreme hardship as required under sections 212(a)(9)(B)(v) and 212(i) of the Act.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Although the decision of the district director engages in a weighing of the favorable and unfavorable factors in the application, the AAO finds this analysis to be in error as a consideration of whether or not the Secretary should exercise discretion is not reached unless extreme hardship is first established.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.